

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday**  
**May 10, 2018**

**Commissioner's Chambers**  
**David R. Sandifer Admin. Bldg.**  
**Brunswick County Government Center**  
**Old US 17 East, Bolivia**

**MEMBERS PRESENT**

Robert Williamson, Chairman  
Virginia Ward, Vice Chairman  
Robert Cruse  
Mary Ann McCarthy

**MEMBERS ABSENT**

None

**STAFF PRESENT**

Helen Bunch, Zoning Administrator  
Bryan Batton, Assistant County Attorney  
Jennifer Dickinson, Planning Technician

**OTHERS PRESENT**

**I. CALL TO ORDER.**

The Chairman called the meeting to order at 6:00 p.m.

**II. ROLL CALL.**

All members were present. There is one (1) vacancy on the Board.

**III. CONSIDERATION OF MINUTES OF THE AUGUST 10, 2017 MEETING.**

Mr. Cruise made a motion to accept the minutes of the April 12, 2018 meeting as written.  
The motion was seconded by Mrs. McCarthy and unanimously carried.

#### IV. AGENDA AMENDMENTS.

Ms. Bunch stated that there would be several items to share as part of the Staff Report.

#### V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mrs. McCarthy explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

Mrs. McCarthy said that the public hearing is not to solicit board public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the records by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

Mrs. McCarthy stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.3.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

Mrs. McCarthy informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

#### VI. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and/or affirmed Ms. Helen Bunch, Mr. Dean Blackmon, and Mr. Dave Tripp as to their testimony being truthful and relevant to the respective case.

## VII. NEW BUSINESS.

- A). 18-03S Special Use Permit  
Applicant: Sandhorn, LLC (#1)  
Location: 9481 Pireway Road, Ash, NC 28420  
Portion of Tax Parcels 16000002 and 1600000208  
Applicant requests a Special Use Permit for a "Class I Mining Operation" consistent with Section 5.2.3. and Section 5.3.7.G of the Brunswick County Unified Development Ordinance.

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Dean Blackmon, representing Norris and Tunstall Consulting Engineers (project engineering firm), was sworn in. He addressed the Board. The Chairman asked if he wanted to move forward with the special use permit request being that there were only four members present and that all 4 members would need to vote in favor of the request in order for the request to be granted. He replied yes. Mr. Blackman summarized that a Class I Mine was proposed for the purpose of selling dirt. Mr. Williamson asked where the dirt would be utilized. Blackmon replied that he did not know. Mr. Williamson asked how many loads would be taken out of the pits per day. Blackmon replied that he did not know as his firm was contracted with to complete paperwork for the project.

Sandhorn, LLC Manager Dave Tripp was sworn in and addressed the Board. He stated that the mine would be used as needed and was not intended for daily use. The Board asked about the access easement in Staff Report. Ms. Bunch stated that the access easement is needed for the future as the land must be subdivided into parcels no greater than 20 acres (Class I Mining Requirement). Mr. Williamson asked if all three mines were going to be used at the same time. The applicant stated that he would work his way from the back to the front. He stated that he would apply for one driveway permit and that he would put in a separate driveway for a neighbor. Mr. Williamson asked how far the neighbor's house is from the mine. Applicant replied that it is a couple hundred feet away. Mr. Cruise asked the applicant to confirm that there would be no use of conveyor systems, screening machines, crushing, or other mechanical equipment and that no explosives will be used in the mining operations. The applicant confirmed this to be the case.

Mrs. McCarthy asked if the applicant owned the surrounding property, and the applicant replied yes. Mrs. McCarthy asked applicant to describe the operation. The applicant said that he may or may not dig to 35 feet, depending upon how deep the accessible dirt can be found. Mrs. McCarthy asked Ms. Bunch if there were any safety requirements were in place. Ms. Bunch replied that there are state mining requirements that include a 40' buffer. She stated that the applicant meets all state and local requirements. Mr. Williamson asked about the slope. The applicant said he would keep a 2:1 slope as they dig. Mrs. Ward asked what the land would look like after the mining is completed. The

applicant said that the land would look natural and the mine would become a pond. Ms. Bunch added that as part of the state mining requirements, a mine reclamation plan was required.

Chairman asked if there was anyone who wanted to speak for or against the mines. No one replied.

With no further comments, Ms. Bunch read the conditions of approval of the Special Use Permit:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the Special Use Permit application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 16000002 in the manner denoted on the revised site plan. The special use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The Applicant must add a 45' access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
7. The applicant shall comply with the additional approval criteria, specifically Section 5.3.7.G of the UDO. The applicant must confirm in writing that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location and that explosives will not be used in the mining operations.
8. If the specified conditions addressed in this special use permit are violated, the permit shall be revoked, and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The Chairman asked if anyone had any questions. There were no questions. The Chairman summarized the case. The Chairman asked if there were any comments to the summation. There were none.

The Board discussed the worksheet and determined the following:

**Application No.** 18-03S

**Applicant:** Sandhorn, LLC (#1)

**Property Location:** 9481 Pireway Road, Ash, NC 28420

**Parcel Number:** Portion of 16000002 and 1600000208

**Zoning District:** Rural Residential (RR)

**Land Use Classification:** Low Density Residential

**Surrounding Zoning:** North: RR, South: RR, East: RR, West: RR

**Proposed Use of Property:** “Class I Mining Operation”

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### **FINDINGS OF FACT**

Having heard all of the evidence and arguments presented at the hearing, the Board of Adjustment, at its regular meeting, and finds:

1. A written application was submitted and complete in all respects.
2. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff Report states that this is a rural area. As such, the proposed use is in harmony with the area.
  - b. No testimony was provided or report submitted by an appraiser regarding the value of properties.
  - c. The applicant testified that once the mining activities were completed the land would be reclaimed and become a pond surrounded by a tree farm, consistent with the Mining Permit Application to be filed with the State of North Carolina.
3. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:

- a. Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations if approved by the Board of Adjustment through the Special Use Permit process.
  - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all of the conditions outlined in the Staff Report are met.
  - d. The property owner and Managing Partner of Sandhorn, LLC testified that he was aware of the UDO requirements and the requirements would be met by the project.
- 4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff report stated that a minimum buffer of 40 feet with natural vegetation will surround the subject site.
  - b. The applicant testified that no chemicals would be used on the site.
- 5. The use, a “Class I Mining Operation”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
    - 1. Circulation: All access to the site will occur from Pireway Road (NC 904) via a 20-foot haul road. A 45’ access easement must be added. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
    - 2. Parking and Loading: There will be no scales or office on-site. As a result, no employee parking will be required. Loading of the trucks will occur on the site. Based upon the proposed length of the haul road, adequate room is available for truck staging.
    - 3. Service Entrances and Areas: All service vehicles will access the subject property from Pireway Road NW (NC 904).
    - 4. Lighting: No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO prior to installation.

5. Signs: Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
  6. Utilities: Public water and sewer are not available to this site, however, neither will be required for this use.
  7. Open Space: There are no separate open space requirements for this use.
  8. Environmental Protection: The applicant must meet all applicable Federal, State and Local Government requirements.
  9. Screening, Buffering and Landscaping: This tract does not front a street, but instead an access road. Appropriate 40' buffers with natural vegetation are shown on the site plan.
  10. Effect on Adjoining Property: The effect on adjoining property is minimal as there is existing undeveloped rural residential property surrounding the site.
  11. Compatibility: The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment. The subject property is in a very remote rural area.
  12. Impacts on Military Installations: The proposed Special Use is not within five (5) miles of a military installation.
- b. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance, specifically:
1. Class I Mining Operations may not occupy more than 20 acres. The site plan denotes a 20-acre parcel.
  2. Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use off-site. However, no further on-site processing is permitted (i.e. use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. Applicant to confirm that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location.
  3. The use of explosives is not permitted. Applicant to confirm that explosives will not be used in the mining operations.
  4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
    - i. Must be located a minimum of 100 feet from all property lines.
    - ii. The depth of each excavation pit shall not exceed 35 feet. Applicant has indicated in the responses that dewatering will not occur.

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.

5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. N/A

DECISION:

Mrs. McCarthy made a motion to Grant the Special Use Permit “because the proposed use if developed as proposed and subject to the conditions imposed below:

- a. **will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,**
- b. **will be in conformance with all special requirements applicable to the use,**
- c. **will not adversely affect the health and safety of the public, and**
- d. **will adequately address the twelve (12) review factors identified in Section 3.3.9.B. of the Brunswick County Unified Development Ordinance.”**

CONDITIONS:

1. That the development shall proceed in conformity with all plans and design features submitted as part of the special use permit application and kept on file by the Brunswick County Planning Department.
2. That the development of the parcel(s) shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance.
3. The applicant must legally subdivide Tax Parcels 16000002 and 1600000208 in the manner denoted on the revised site plan. The special use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The applicant must add a 45’ access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.



7. The applicant shall comply with the additional approval criteria, specifically Section 5.3.7.G. of the UDO. The applicant must confirm in writing that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location and that explosives will not be used in the mining operations.
8. That if the specified conditions addressed in this special use permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The motion was seconded by Mr. Cruse and unanimously carried.

B). 18-04S Special Use Permit  
Applicant: Sandhorn, LLC (#2)  
Location: 9475 Pireway Road, Ash, NC 28420  
Portion of Tax Parcel 16000002  
Applicant requests a Special Use Permit for a “Class I Mining Operation” consistent with Section 5.2.3. and Section 5.3.7.G of the Brunswick County Unified Development Ordinance.

Sandhorn, LLC manager Dave Tripp addressed the Board. The Chairman asked if the conditions and details of the previous case were the same as this case. The applicant replied yes. The applicant stated that he would use this special use permit for the same purpose as the previous case. Mrs. Ward asked what the applicant’s intended use for the property is after the mining operation is complete. The applicant replied that he would use the property for hunting. The applicant stated that the dirt that comes from the mine would be used for residential and commercial development purposes. Mrs. McCarthy asked if all of the answers to her questions for the first case would be the same for this one. The applicant replied yes.

The Chairman asked Ms. Bunch if the information in the staff report was the same from the previous case with the exception of the parcels. Ms. Bunch replied that the only difference in this case is that there is only one parcel involved in this case. Ms. Bunch entered into the record the proposed conditions:

**CONDITIONS:**

1. That the development shall proceed in conformity with all plans and design features submitted as part of the special use permit application and kept on file by the Brunswick County Planning Department.
2. That the development of the parcel(s) shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance.
3. The applicant must legally subdivide Tax Parcels 16000002 and 1600000208 in the manner denoted on the revised site plan. The special

use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.

4. The applicant must add a 45' access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
7. The applicant shall comply with the additional approval criteria, specifically Section 5.3.7.G. of the UDO. The applicant must confirm in writing that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location and that explosives will not be used in the mining operations.
8. That if the specified conditions addressed in this special use permit are violated, the permit shall be revoked and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The Chairman summarized the case and asked if there were comments to the summation. There were none.

### **FINDINGS OF FACT**

Having heard all of the evidence and arguments presented, the Board of Adjustment at its regular meeting finds:

1. A written application was submitted and complete in all respects.
2. The use, a "Class I Mining Operation", for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff Report states that this is a rural area. As such, the proposed use is in harmony with the area.
  - b. No testimony was provided or report submitted by an appraiser regarding the value of properties.

- c. The applicant testified that once the mining activities were completed the land would be reclaimed and become a pond surrounded by a tree farm, consistent with the Mining Permit Application to be filed with the State of North Carolina.
- 3. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations if approved by the Board of Adjustment through the Special Use Permit process.
  - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all of the conditions outlined in the Staff Report are met.
  - d. The property owner and Managing Partner of Sandhorn, LLC testified that he was aware of the UDO requirements and the requirements would be met by the project.
- 4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff report stated that a minimum buffer of 40 feet with natural vegetation will surround the subject site.
  - b. The applicant testified that no chemicals would be used on the site.
- 5. The use, a “Class I Mining Operation”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
    - 1. Circulation: All access to the site will occur from Pireway Road (NC 904) via a 20-foot haul road. A 45’ access easement must be added. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements

are warranted. Required improvements must be made prior to final zoning approval.

2. Parking and Loading: There will be no scales or office on-site. As a result, no employee parking will be required. Loading of the trucks will occur on the site. Based upon the proposed length of the haul road, adequate room is available for truck staging.
3. Service Entrances and Areas: All service vehicles will access the subject property from Pireway Road NW (NC 904).
4. Lighting: No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. "Outdoor Lighting" of the UDO prior to installation.
5. Signs: Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
6. Utilities: Public water and sewer are not available to this site, however, neither will be required for this use.
7. Open Space: There are no separate open space requirements for this use.
8. Environmental Protection: The applicant must meet all applicable Federal, State and Local Government requirements.
9. Screening, Buffering and Landscaping: This tract does not front a street, but instead an access road. Appropriate 40' buffers with natural vegetation are shown on the site plan.
10. Effect on Adjoining Property: The effect on adjoining property is minimal as there is existing undeveloped rural residential property surrounding the site.
11. Compatibility: The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment. The subject property is in a very remote rural area.
12. Impacts on Military Installations: The proposed Special Use is not within five (5) miles of a military installation.

- b. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance, specifically:

1. Class I Mining Operations may not occupy more than 20 acres. The site plan denotes a 20-acre parcel.
2. Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use off-site. However, no further on-site processing is permitted (i.e. use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. Applicant to confirm that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location.
3. The use of explosives is not permitted. Applicant to confirm that explosives will not be used in the mining operations.

4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:

- ii. Must be located a minimum of 100 feet from all property lines.

- ii. The depth of each excavation pit shall not exceed 35 feet. Applicant has indicated in the responses that dewatering will not occur.

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.

5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. N/A

- c. The applicant heard and agreed to abide by the requirements at the hearing.

Mrs. McCarthy asked what the total acreage of the land was. The applicant replied 500 acres. The Chairman asked if there was anyone who wanted to speak in favor of or opposition to the mine. No one did.

#### DECISION:

Mr. Cruse made a motion to Grant the Special Use Permit “because the proposed use if developed as proposed and subject to the conditions imposed below:

- a. **will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,**
- b. **will be in conformance with all special requirements applicable to the use,**
- c. **will not adversely affect the health and safety of the public, and**
- d. **will adequately address the twelve (12) review factors identified in Section 3.3.9.B. of the Brunswick County Unified Development Ordinance.”**

#### CONDITIONS:

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).

2. The development shall proceed in conformity with all amended plans and design features submitted as part of the special use application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 16000002 in the manner denoted on the revised site plan. The special use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The applicant must add a 45' access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
7. The applicant shall comply with the additional approval criteria, specifically Section 5.3.7.G. of the UDO. The applicant must confirm in writing that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location and that explosives will not be used in the mining operations.
8. If the specified conditions addressed in this special use permit are violated, the permit shall be revoked, and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The motion was seconded by Mrs. Ward and unanimously carried.

C). 18-05S Special Use Permit  
Applicant: Sandhorn, LLC (#3)  
Location: 9469 Pireway Road, Ash, NC 28420  
Portion of Tax Parcel 16000002  
Applicant requests a Special Use Permit for a "Class I Mining Operation" consistent with Section 5.2.3. and Section 5.3.7.G of the Brunswick County Unified Development Ordinance.

The Chairman asked Ms. Bunch if the information in the staff report was the same as the previous cases. She replied yes, with the exception that the proposed parcel consists of 6.31 acres. The applicant confirmed that their previous testimony is applicable to this case. Ms. Bunch entered into the record the proposed conditions.

**CONDITIONS:**

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the special use application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 16000002 in the manner denoted on the revised site plan. The special use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The applicant must add a 45' access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
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The Chairman summarized the case and asked if there were comments to the summation. There were none.

## **FINDINGS OF FACT**

Having heard all of the evidence and arguments presented, the Board of Adjustment at its regular meeting finds:

1. A written application was submitted and complete in all respects.
2. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought is in harmony with the area and is not substantially injurious to the value of properties in the general vicinity. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff Report states that this is a rural area. As such, the proposed use is in harmony with the area.
  - b. No testimony was provided or report submitted by an appraiser regarding the value of properties.
  - c. The applicant testified that once the mining activities were completed the land would be reclaimed and become a pond surrounded by a tree farm, consistent with the Mining Permit Application to be filed with the State of North Carolina.
3. The use, a “Class I Mining Operation”, for which the Special Use Permit is sought, is in conformance with all special requirements applicable to this use. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. Section 5.2.3. of the Brunswick County Unified Development Ordinance lists a Class I Mining Operation as a permissible use in the RR Zoning District if approved by the Board of Adjustment through the Special Use Permit process.
  - b. Section 5.3.7.G. of the UDO outlines the additional criteria for Class I Mining Operations if approved by the Board of Adjustment through the Special Use Permit process.
  - c. The application packet submitted by the applicant was reviewed by the Zoning Administrator and found to meet all requirements and conditions of the ordinance, if all of the conditions outlined in the Staff Report are met.
  - d. The property owner and Managing Partner of Sandhorn, LLC testified that he was aware of the UDO requirements and the requirements would be met by the project.



4. The use, “Class I Mining Operation”, for which the Special Use Permit is sought, if developed as proposed will not adversely affect the health and safety of the public. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Staff report stated that a minimum buffer of 40 feet with natural vegetation will surround the subject site.
  - b. The applicant testified that no chemicals would be used on the site.
5. The use, a “Class I Mining Operation”, if developed as proposed will adequately address the twelve (12) review factors identified in Section 3.5.9.B. of the Brunswick County Unified Development Ordinance. This is based on sworn testimony and evidence submitted during the hearing which shows the following:
  - a. The Board concurs with the staff report which outlines the twelve (12) review factors as stated in the Unified Development Ordinance, specifically:
    1. Circulation: All access to the site will occur from Pireway Road (NC 904) via a 20-foot haul road. A 45’ access easement must be added. As a condition of approval, the applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
    2. Parking and Loading: There will be no scales or office on-site. As a result, no employee parking will be required. Loading of the trucks will occur on the site. Based upon the proposed length of the haul road, adequate room is available for truck staging.
    3. Service Entrances and Areas: All service vehicles will access the subject property from Pireway Road NW (NC 904).
    4. Lighting: No outdoor lighting is proposed with this request. Any new outdoor lighting must meet the lighting requirements stated in Section 6.9. “Outdoor Lighting” of the UDO prior to installation.
    5. Signs: Any signage must meet the requirements of Article 8, Signs of the UDO prior to installation. Signage is a separate permitting process.
    6. Utilities: Public water and sewer are not available to this site, however, neither will be required for this use.
    7. Open Space: There are no separate open space requirements for this use.
    8. Environmental Protection: The applicant must meet all applicable Federal, State and Local Government requirements.
    9. Screening, Buffering and Landscaping: This tract does not front a street, but instead an access road. Appropriate 40’ buffers with natural vegetation are shown on the site plan.
    10. Effect on Adjoining Property: The effect on adjoining property is minimal as there is existing undeveloped rural residential property surrounding the site.

11. Compatibility: The proposed use is permissible in the RR Zoning District with Special Use Permit approval by the Board of Adjustment. The subject property is in a very remote rural area.
  12. Impacts on Military Installations: The proposed Special Use is not within five (5) miles of a military installation.
- b. The Board concurs with the staff report which outlines the additional review factors as stated in Section 5.3.7.G. for Class I Mining Operations in the Unified Development Ordinance, specifically:
1. Class I Mining Operations may not occupy more than 20 acres. The site plan denotes a 20-acre parcel.
  2. Soil or other unconsolidated material (i.e. sand, marl, rock, fossil deposits, peat, fill or topsoil) may be removed for use off-site. However, no further on-site processing is permitted (i.e. use of conveyor systems; screening machines; crushing; or other mechanical equipment). Mining activities where other on-site processing activities are conducted are considered Class II Mining Operations. Applicant to confirm that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location.
  3. The use of explosives is not permitted. Applicant to confirm that explosives will not be used in the mining operations.
  4. All mining operations and their associated activities shall comply with the following standards when dewatering occurs:
    - i. Must be located a minimum of 100 feet from all property lines.
    - ii. The depth of each excavation pit shall not exceed 35 feet. Applicant has indicated in the responses that dewatering will not occur.

Commentary: The pumping of surface waters from one excavation pit to another excavation pit when located on the same parcel of land as the mining operation shall not be considered dewatering.
  5. Temporary sand and soil mining activities undertaken in conjunction with land development may be considered a Temporary Mining or Borrow Pit subject to compliance with Section 5.5.4. N/A

DECISION:

Mrs. Ward made a motion to Grant the Special Use Permit “because the proposed use if developed as proposed and subject to the conditions imposed below:

- a. **will be in harmony with the area and not substantially injurious to the value of properties in the general vicinity,**

- b. will be in conformance with all special requirements applicable to the use,**
- c. will not adversely affect the health and safety of the public, and**
- d. will adequately address the twelve (12) review factors identified in Section 3.3.9.B. of the Brunswick County Unified Development Ordinance.”**

**CONDITIONS:**

1. The development of the parcel shall comply with all regulations as specified in the Brunswick County Unified Development Ordinance (UDO).
2. The development shall proceed in conformity with all amended plans and design features submitted as part of the special use application and kept on file by the Brunswick County Planning Department.
3. The applicant must legally subdivide Tax Parcel 16000002 in the manner denoted on the revised site plan. The special use is to only be applicable to the pit site denoted on the site plan. The remaining parent parcel will not be a part of the Class I Mining Operation Special Use Permit.
4. The applicant must add a 45’ access easement for the proposed haul road.
5. The applicant must apply for and receive a State Mining Permit from the North Carolina Department of Environment and Natural Resources (DENR). Prior to the beginning of any excavation activities on the property, a copy of the State Mining Permit must be filed with the Brunswick County Planning Department.
6. The applicant must notify the North Carolina Department of Transportation (NCDOT) of the proposed change of use and provide the Brunswick County Planning Department with documentation from NCDOT stating whether site access improvements are warranted. Required improvements must be made prior to final zoning approval.
7. The applicant shall comply with the additional approval criteria, specifically Section 5.3.7.G. of the UDO. The applicant must confirm in writing that the use of conveyor systems, screening machines, crushing, or other mechanical equipment will not take place at this location and that explosives will not be used in the mining operations.
8. If the specified conditions addressed in this special use permit are violated, the permit shall be revoked, and the use will no longer be allowed. Only by reapplying to the Board of Adjustment for another special use permit and receiving their approval can the use be again permitted.

The motion was seconded by Mr. Cruse and unanimously carried.

#### VIII. STAFF REPORT.

Ms. Bunch addressed the Board. She stated that setback certifications had been discussed at the last Board of Adjustment meeting. She gave the Board a copy of the draft proposed text amendment that will be on the Planning Board's May agenda. Board Members read the draft. The Chairman asked if there was a property size limit in the text amendment. Mr. Batton replied that the setback certification refers to the proximity of the proposed structure to the property line, rather than the size of the lot determining the need for the setback certification. Ms. Bunch stated that she feels this text amendment will alleviate previously discussed setback concerns, and asked that Board members endorse the amendment. The Chairman asked if they could have time to review the text. Ms. Bunch requested that they give some sort of response so that Planning Board would know how BOA reacted to the amendment. The Board took time to read the amendment. Mr. Williamson asked Ms. Bunch if the certification letter would take place before construction is started. Ms. Bunch replied that the foundation footing would be the only item that could be completed before the letter was required and that the only way the property would be inspected is if the setback certification letter or survey had been submitted. Mr. Batton stated that the permitting software would not allow the project to be inspected until the setback certification had been approved. Ms. Bunch requested a motion to approve the amendment. Mr. Cruse made the motion in support of the text amendment as submitted, the motion was seconded by Mr. Williamson and unanimously carried.

Ms. Bunch stated that due to the large number of cases, there is a need to have an additional meeting in the month of June. The regular meeting is scheduled for June 14, 2018. She proposed holding the second meeting on June 28, 2018. The Board asked how many applications there were for the scheduled meetings. Bunch stated that six applications are expected. Ms. Bunch requested a motion for the second meeting. Mrs. Ward made the motion and the motion was seconded by Mr. Cruse and unanimously carried.

Ms. Bunch introduced Jennifer Dickinson as a new member of the Planning Department staff.

#### IX. ADJOURNMENT.

With no further business, Mrs. Ward made a motion to adjourn. The motion was seconded by Mr. Cruse and unanimously carried.